

Earl L. Patrick v. U.S. General Accounting Office

Docket No. 25-100-17-83

Date of Decision: April 17, 1984

Cite as: Patrick v. GAO (4/17/84)

Before: Bowers, Presiding Member

Prohibited Personnel Practices

Classification of Jobs

Equal Pay

DECISION OF THE PRESIDING MEMBER

On February 13, 1984, a hearing was held to determine whether Earl L. Patrick had been subject to a prohibited personnel practice, in violation of 5 U.S.C. §2302(b)(11). An Order of the Personnel Appeals Board (PAB) dated October 3, 1983, found that the Petitioner's allegations involve application of the position classification regulations contained in GAO Order No. 2511.1 and that a prohibited personnel practice exists if these regulations are applied in a manner which results in a substantial deviation from the equal pay principle. On January 12, 1984, the Presiding Member issued another Order which established that the burden of proof was on the Petitioner to show that the General Accounting Office (GAO) made a classification decision or decided the Petitioner's classification appeal in a manner that was arbitrary, capricious, or lacking a reasonable basis in law. This Order also held that mere disagreement with the GAO's classification determinations did not constitute adequate proof in and of itself and that, therefore, it would not be appropriate for the PAB to make a de novo classification decision and substitute its judgment for that of the GAO.

At the outset of the Hearing, the parties stipulated to the following facts:

1. Petitioner is a Motor Vehicle Operator, Wage Grade Series 5703, Grade 5 in the Mail and Distribution Section, Document Production Branch, Office of Administrative and Publishing Services (OAPS), GAO.
2. During the entire period relevant to this case, approximately mid-1977 to mid-1981, the Petitioner was classified as described above and worked in the external mail sub-section of the Mail and Distribution Section.
3. During this period, Andrew Houston was the supervisor of this Section.
4. In mid-1977, Mr. Houston designated Mr. Elwood Rhone to be the Lead Motor Vehicle Operator and authorized him to perform certain supervisory functions. At or about the same time, Mr. Houston also gave the Petitioner standing verbal instructions to assist Mr. Rhone in the performance of his duties.

5. From mid-1977 to mid-1981, the Petitioner followed these instructions and acted as Lead Motor Vehicle Operator.

6. A separate position classification and a higher rate of pay were never formally established or available for the duties the Petitioner performed during the relevant time period.

There is no dispute that Mr. Patrick performed certain duties in assisting Mr. Rhone that are not described in the classification of his position of Motor Vehicle Operator. According to the Petitioner, his assignment to assist the Lead Motor Vehicle Operator constitutes a violation of GAO Order 2511.1 because a separate position as "Assistant Lead Motor Vehicle Operator" was never classified nor available. The GAO argues, however, that even if the duties performed by the Petitioner had been added to his job description, this would not have changed his classification as Wage Grade Series 5703, Grade 5 (See also, Respondent's Exhibit 2). Furthermore, the record is clear that while the Petitioner did perform the same duties as the Lead Motor Vehicle Operator in his absence and/or during that portion of the day when he was not on duty, this did not qualify the Petitioner for a change in job classification. A portion of the standards for a Work Leader position (Respondent's Exhibit 1) states, under "Jobs Not Covered By This Standard:"

Employees who have "shift responsibility, but do not lead other workers. (On night shifts..., one employee may be in charge of work operations when a supervisor is not available for technical advice and guidance. This may require the performance of additional and more responsible duties in locating problems, determining and taking actions necessary to maintain operations, and relaying instructions to the person in charge..., including problems encountered and actions taken). Such an employee is graded under the non-supervisory (WG) grading structure.

In addition, the Job Grading Standard for Leader WL (Respondent's Exhibit 1) under which Mr. Rhone's position was classified provides that the work leader standard should not be applied to employees who "assist" work leaders or who act as leaders only in the absence of the regular leader.

The Petitioner testified that, from time to time after his assignment to assistant Lead Motor Vehicle Operator, he inquired about additional pay for the work performed. On each occasion, his testimony is un rebutted that he was told that this possibility may exist but the paperwork had not been completed. Although these delays in definitely responding to the Petitioner's inquiries are not condoned, the preponderance of the evidence and testimony presented demonstrates that Mr. Patrick did not do more than assist the work leader, Mr. Rhone, or act as leader in Mr. Rhone's absence. Accordingly, in applying the established job grading standards to Petitioner's duties and determining that a reclassification was not required, the GAO did not violate the equal pay principle or make a classification determination lacking a reasonable basis in law, rule, or regulation.

Another complaint asserted by the Petitioner was that GAO Order 2511.1, Chap. 1, Para. 6(b) was violated because his assignment to assistant Lead Motor Vehicle Operator constituted an extended detail, beyond 120 days, to duties or a position that was not properly classified. Once again, however, the Petitioner does not prevail. It has already been found that, even given the assumption of such duties, this would not have changed the Petitioner's classification as a Wage Grade Series 5703, Grade 5. On the basis of this finding, it has been determined that the Petitioner was not detailed to a higher level position, and is not, therefore, entitled to be paid for his service as assistant Lead Motor Vehicle Operator by virtue of an extended detail beyond 120 days.

Finally, comes the question of the Petitioner's claim that his classification appeal was handled in an arbitrary and capricious manner. The substance of this claim is that the GAO failed to properly investigate his classification appeal by interviewing his supervisors and co-workers. Mr. Oliver Lewis, the Classification Specialist, who handled Mr. Patrick's classification appeal, testified that neither a broad nor a narrow spectrum of interviews is necessarily conducted in appropriately determining the outcome of any classification appeal. He also testified that a written statement from the Supervisor, in this case Mr. Houston, is a sufficient basis to proceed on the evaluation of a classification appeal. Such a written statement appears as Respondent's Exhibit 7 in this case. It is not necessary in this case, however, to determine whether GAO's investigation of Mr. Patrick's classification appeal was adequate in this regard. As indicated above, his additional duties did not require reclassification under the appropriate job grading standards. Thus, even if a more thorough investigation had been conducted, the result would have been the same. The error, if any, therefore, was harmless.

As a consequence of these findings, it has been determined that the Petitioner has failed to uphold the burden of proof in this case. However, in line with the suggestion in the Director of Personnel's February 16, 1982 decision on Mr. Patrick's classification appeal, it is appropriate that the Petitioner's service as assistant Lead Motor Vehicle Operator between mid-1977 and mid-1981 be noted in his official Personnel File. All other claims made by the Petitioner in the instant case are denied.